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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION EIGHT

In re D.S., a Person Coming Under the  
Juvenile Court Law

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THE PEOPLE OF THE STATE OF  
CALIFORNIA,

Plaintiff and Respondent,

v.

D.S.,

Defendant and Appellant.

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B210106

(Los Angeles County Super. Ct.  
No. J817871)

APPEAL from the order of the Superior Court of Los Angeles County. Christina Hill, Judge. Affirmed.

John A. Colucci, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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## **INTRODUCTION**

While a juvenile in 1980, appellant suffered an adjudication for forcible rape. Twenty-seven years later, after two unsuccessful attempts to have his juvenile court records sealed, appellant sought reconsideration of the last order denying his petition to seal records. Appellant appeals from the order denying his petition for reconsideration. Because he raises no arguable issues, we affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

On June 11, 1980, when appellant was 17 years old and on probation for petty theft, he was charged with forcible rape of his foster mother (Pen. Code, former § 261, subd. (2)). Appellant was represented by a deputy public defender. At the adjudication hearing on July 14, 1980, the juvenile court sustained the petition. On August 4, 1980, the court declared the offense a felony and ordered petitioner to be “suitably placed.” According to the juvenile court’s minute order, the court gave written notice to petitioner of his right to appeal the judgment.

Appellant tried in 2002 to have his juvenile court records sealed, but was unsuccessful. The juvenile court denied the petition in December 2002 because his adjudication for forcible rape made him ineligible for sealing of juvenile court records. (Welf. & Inst. Code, §§ 707, subd. (b)(4), 781, subd. (a).) Several years later, petitioner again tried to have his juvenile court records sealed. The court denied the request in November 2006.

In August 2007, appellant, an inmate in the California State Prison at Soledad County, filed a handwritten “petition for reconsideration/modification” with regard to the juvenile court’s November 2006 order denying his request to seal juvenile court records. In November 2007, appellant executed an “affidavit in support to seal juvenile record and court order,” claiming prison officials were classifying him as a “sex offender” because of his 1980 juvenile adjudication. Proclaiming his innocence, appellant claimed he never spent a day in a “suitable placement” after his 1980 adjudication, but rather he was

released to his grandparents and went on attending high school. He demanded his juvenile court record be sealed and that prison officials remove his sexual offender classification.

Appellant filed a “notice and request for ruling” in April 2008 stating he had not received a ruling on his reconsideration petition and requesting one within 30 days. The juvenile court denied the petition for reconsideration on June 16, 2008.

On July 24, 2008, appellant filed a form notice of appeal indicating he was appealing his 1980 rape adjudication *and* the June 2008 order denying his petition for reconsideration. Appellant attached a declaration to the notice of appeal and more than 60 pages of exhibits. In his declaration, appellant alleged, among other things, that he was denied effective assistance of counsel in the 1980 rape case because his appointed counsel failed to properly investigate and defend the case, was operating under an unspecified conflict of interest, and did not file a notice of appeal. He also claimed, in conclusory terms, that he was denied due process and equal protection during the 1980 adjudication hearing, that he believed he was “pardoned” from the 1980 rape adjudication and only recently learned he was not when the adjudication was used to support a three-strike sentence and his classification by prison officials as a sex offender.

The 60 or so pages of exhibits included a handwritten notice of appeal and petition for writ of habeas corpus dated January 9, 2008, which appellant claimed he filed in the juvenile court at Long Beach but never received a response. This notice of appeal (with another four-page declaration) and writ petition sought to appeal from and challenge the 1980 rape adjudication on many of the same grounds as described above. Appellant later filed a request for ruling on his January 2008 notice of appeal and habeas petition.<sup>1</sup>

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<sup>1</sup> Other than the request for ruling, there is no evidence in the record (i.e., no file stamp or proof of service) the notice of appeal and habeas petition, or the many exhibits, were actually separately filed in January 2008 or any other time. The notice of appeal and habeas petition (and exhibits) are also the subject of appellant’s petition for writ of mandate filed in this court on October 27, 2008. (Case No. B211637.) Our separate ruling on the mandate petition accompanies this appeal decision.

This appeal is from the order denying appellant's August 2007 petition for reconsideration. It is a proper and timely appeal as an order after judgment. (Welf. & Inst. Code, § 800, subd. (a); Cal. Rules of Court, rule 5.585(f).)

### **DISCUSSION**

We appointed appellate counsel, who filed a brief stating he could not find any arguable issues for appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) We sent a letter to appellant inviting him to submit a letter or brief raising any issues he wished for us to consider. He filed a letter focusing exclusively on challenging his 1980 rape adjudication. That juvenile adjudication is more than 25 years old. Any appeal from this adjudication is untimely. (Welf. & Inst. Code, § 800, subd. (a); *In re Almalik S.* (1998) 68 Cal.App.4th 851, 854; Cal. Rules of Court, rule 5.585(f); see also *In re Benoit* (1973) 10 Cal.3d 72, 88-89 [diligence by defendant required for application of constructive filing doctrine].)

We have carefully reviewed the record and find no arguable issues for appeal.

### **DISPOSITION**

The juvenile court's order is affirmed.

FLIER, J.

WE CONCUR:

RUBIN, Acting P. J.

BIGELOW, J.